

**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

*The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007*

October 5, 2014

**MEMO ENDORSED**

**BY HAND AND ECF**

The Honorable Kenneth M. Karas  
United States District Court  
Southern District of New York  
United States Courthouse  
300 Quarropas Street  
White Plains, NY 10601

**Re: United States v. FNU LNU, a/k/a "Oscar Mario Garcia"  
10 Cr. 756 (KMK)**

Dear Judge Karas:

As Your Honor is aware, the defendant in the above referenced matter was convicted of naturalization fraud, in violation of 18 U.S.C. § 1425, among other charges. On or about September 17, 2014, by summary order, the Second Circuit denied the defendant's appeal. This case is now closed. It has come to the Government's attention, however, that certain orders of denaturalization, pursuant to 8 U.S.C. § 1451(e), were never entered as to this defendant. As such, the Government requests that this case be re-opened for the purpose of entering these orders.

On July 20, 2012, the defendant was convicted following a jury trial of naturalization fraud, in violation of 18 U.S.C. § 1425, among other charges. On or about May 29, 2013, Your Honor sentenced the defendant to a total term of imprisonment of 45 months'.

A conviction under 18 U.S.C. § 1425 results in automatic denaturalization pursuant to 8 U.S.C. § 1451(e). The statute states:

When a person shall be convicted under Section 1425 of Title 18 of knowingly procuring naturalization in violation of law, the court in which such conviction is had *shall thereupon* revoke, set aside, and declare void the final order admitting such person to citizenship, and *shall* declare the certificate of naturalization or such person to be canceled. Jurisdiction is conferred on the courts having jurisdiction of the trial of such offense to make such adjudication.

8 U.S.C. § 1451(e) (emphasis added). Although the defendant was convicted in 2012, the Court may nonetheless enter such an order of denaturalization at this time. See United States v. Inocencio, 328 F.3d 1207 (9th Cir. 2003) (upholding a district court's order to revoke naturalization five years after the defendant's conviction under 18 U.S.C. § 1425(b)); United States v. Diaulicia Caba, et al., 06-Cr-924 (JFK) (Dkt Entry 151) (revoking defendants' citizenship approximately 5 years after the defendants' conviction under 18 U.S.C. § 1425). As the Court recognized in Inocencio, the entry of such an order is in keeping with Congressional intent to require automatic revocation of naturalization that has been obtained in a fraudulent manner. Id. at 1210. Further, such an order does not implicate a violation of due process because a defendant who procures naturalization through fraud has no right to such naturalization in the first instance. Id. at 1211. Thus, the Government respectfully requests that the Court reopen this matter and enter an order revoking the defendant's citizenship, as well as order the defendant to forfeit his naturalization certificate pursuant to 8 U.S.C. § 1451(f). Although the Government is not aware of any ground on which the defendant may oppose the entry of this order, the Government has no objection to the Court offering defense counsel an opportunity to consult with the defendant prior to the entry of this order.

A proposed order, for the Court's consideration, is also attached hereto.

Respectfully submitted,


PREET BHARARA  
United States Attorney

by: \_\_\_\_\_/s\_\_\_\_\_  
Rebecca Mermelstein  
Assistant United States Attorney  
(212) 637-2360

cc: Malvinia Nathanson, Esq. (by email)

Counsel for the Defendant is  
to respond to this letter by  
October 20, 2014.

So Ordered.

  
10/6/14

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

UNITED STATES OF AMERICA

:

- v. -

ORDER

:

FNU LNU,

10 Cr. 756 (KMK)

a/k/a "Oscar Mario

:

Garcia"

:

Defendant.

- - - - - x

**KENNETH M. KARAS, United States District Judge:**

WHEREAS, on July 20, 2012, defendant FNU LNU, a/k/a "Oscar Mario Garcia," was convicted following a jury trial of, among other offenses, violating Title 18, United States Code, Section 1425, by fraudulently procuring naturalization and was sentenced to 45 months' imprisonment on May 29, 2013.

WHEREAS, Title 8, United States Code, Section 1451(e) requires automatic denaturalization of persons convicted under Title 18, United States Code, Section 1425 of knowingly procuring naturalization in violation of law.

WHEREAS, on \_\_\_\_\_, the Court issued an order directing counsel to notify the defendant of the Government's application for denaturalization and file any objections thereto on or before \_\_\_\_\_.

WHEREAS, [the defendant has declined to file any objection to the Government's application] [the Court has received no objection or other communication from the defendant or his counsel] [by letter

dated \_\_\_\_\_, counsel/the defendant asked that, despite the statute's mandatory language, the Court decline the Government's request to revoke the defendant's naturalization].

THE COURT HEREBY revokes, sets aside, and declares void the order admitting the defendant to citizenship and declares his Certificate of Naturalization in the name "Oscar Mario Garcia," cancelled on the ground that he was convicted in this Court of violating Title 18, United States Code, Section 1425.

THE COURT FURTHER ORDERS that, pursuant to Title 8, United States Code, Section 1451(f), the defendant surrender his certificate of naturalization.

Dated: White Plains, New York  
October \_\_\_, 2014

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HONORABLE KENNETH M. KARAS  
UNITED STATES DISTRICT JUDGE